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Letters Barred As Evidence At B26 Trial

By ORR KELLY
Star Staff Writer

BUFFALO, N.Y.—Three letters that a federal judge said would have been "terribly damaging" have been ruled out as evidence in the case of two men on trial here on charges of smuggling seven B26 bombers out of the United States.

In the absence of the jury, Federal District Judge John O. Henderson ruled yesterday afternoon that the three letters—allegedly written in French by Count Henri Marin de Montmarin to his wife and seized by customs agents at the time of his arrest—could not be used as evidence in the case against De Montmarin and John Richard Hawke, a former Royal Air Force pilot.

"Of course these letters would be terribly damaging because of the amount of money involved," Henderson remarked as U.S. Atty. John T. Curtin was reading translated excerpts from them.

From the context, it appeared that the letters were written by De Montmarin, a former French cavalry officer and fighter pilot in the Free French forces during World War II, to his wife when their fortunes were at a low ebb in the spring of 1965.

At the time, Montmarin was in Tucson, Ariz., where he was allegedly arranging for the shipment of B26 bombers to the Portuguese for use in their possessions in Angola and Mozambique.

Read by Curtin

As read by Curtin, the letters referred to several unsuccessful business deals. At one point De Montmarin was quoted as stating that he would have to make it through the next few weeks on his credit card. But the letters went on to describe the glowing prospects of the deal.

Twenty planes, one of the letters said, could be bought for \$645,550 and sold to the Portuguese for \$1,520,461. The net

profit, after deducting other expenses, including an otherwise unexplained payment of \$3,920 to Portuguese officials, would be \$739,910.60. This was to be split three ways, the letters indicated.

"That sounds like a lot of money and probably would impress the jury very much," said Henderson.

But after hearing arguments from Curtin and De Montmarin's attorney, Edward Brodsky, Henderson ruled that the letters should be excluded because they did not play a significant role in the alleged crime and because they involved the normally privileged relationship between De Montmarin and his wife.

"You'd like to make it a big fat commercial venture; that's why you wanted it in here," Henderson remarked at one point.

The ruling against admission of the letters came as a climax to the kind of a long day for the prosecutor.

Last Friday, Curtin put Frank Tumminia, a licensing officer for the State Department's office of munitions control, on the stand to testify that he had checked the records of his office and found that no export licenses had been issued for the seven B26 that Hawke admits having flown across the ocean to Portugal.

Returns to Stand

Brodsky and Edwin Marger, attorney for Hawke examined Tumminia so successfully that Curtin felt obliged to bring him back again yesterday to make sure the jury understood his testimony.

But by the time Brodsky and Marger finished questioning him, Tumminia had admitted he didn't know of any regulation that required the filing of export licenses in his office, didn't know who his superior's superior were, had never asked Secretary of State Dean Rusk if he had issued export license without letting Tumminia know about it.

Curtin said he would finish up his case today. Subpoenaed to testify as defense witnesses later this week are Lawrence R. Huston, general council of the Central Intelligence Agency—which Hawke insists, was behind the whole deal—and Richard M. Bissell, former deputy director of the CIA.

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